

Public Trust: A Shoreline Standard 2000 Years in the Making

**Susan L. Bailey, Environmental Analyst 3
Office of Long Island Sound Programs
Bureau of Water Protection and Land Reuse
Connecticut Dept. of Environmental Protection**



Well, ok, 1,478 years ago...

- ✦ Institutes of Justinian (under Roman Emperor Justinian who reigned 529 through 534 A.D.) formed Roman civil law and declared that the public could use the shore, but not own it
- ✦ Roman civil law influenced the law in all Western European nations
- ✦ After the Magna Charta in 1215, Roman civil law was adopted, with some changes, by English common law
- ✦ English common law allowed ownership of shore but protected, in the king's name, tidelands and waters for all English subjects
- ✦ From England to the American colonies through the Revolution to the states, modified by the Constitution and the evolution of modern society.... the Public Trust Doctrine lives!



What is the Public Trust Doctrine?

- ⊕ Common law doctrine, established by courts
- ⊕ In the U.S., public trust lands and waters include navigable freshwaters lakes, great ponds and rivers and their bottomlands, shorelands, tidelands, tidewaters, and the living resources within these waters. Each state sets public trust boundaries.
- ⊕ Public rights and uses
 - ⊕ *Navigation*
 - ⊕ *Commerce*
 - ⊕ *Fishing, shellfishing, hunting, harvesting seaweed*
 - ⊕ *Swimming, bathing*
 - ⊕ *“Passing and repassing”*
 - ⊕ *Not self-executing- if the State doesn’t enforce it, no one does*

Public Trust uses include:



COMMERCE:

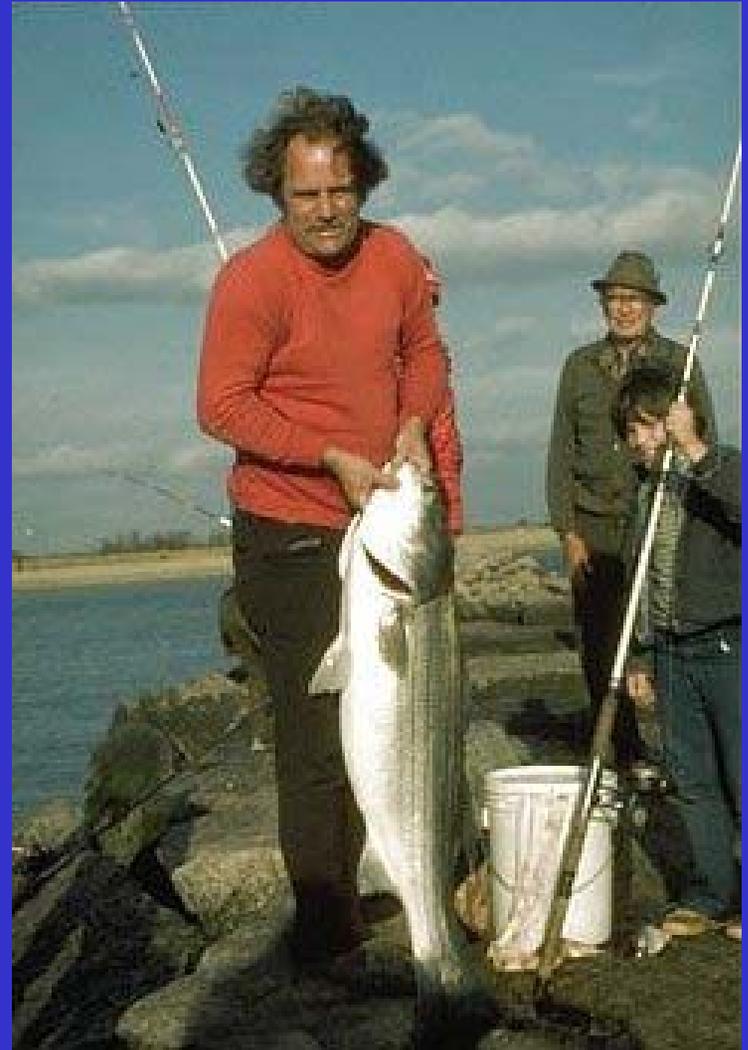
SHIPPING and TRANSPORTATION

Recreational boating



Swimming and sunbathing

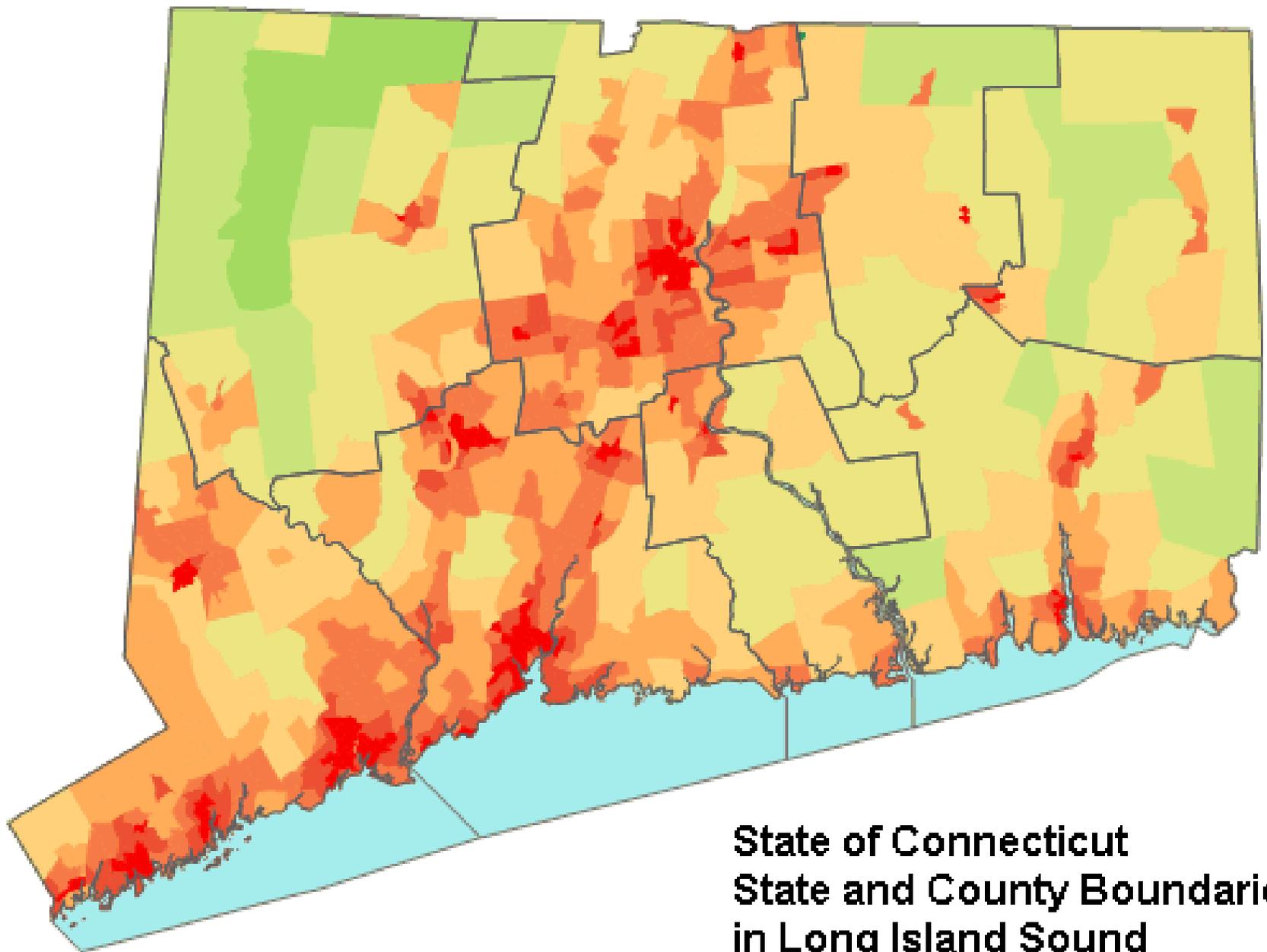
Shellfishing and fishing



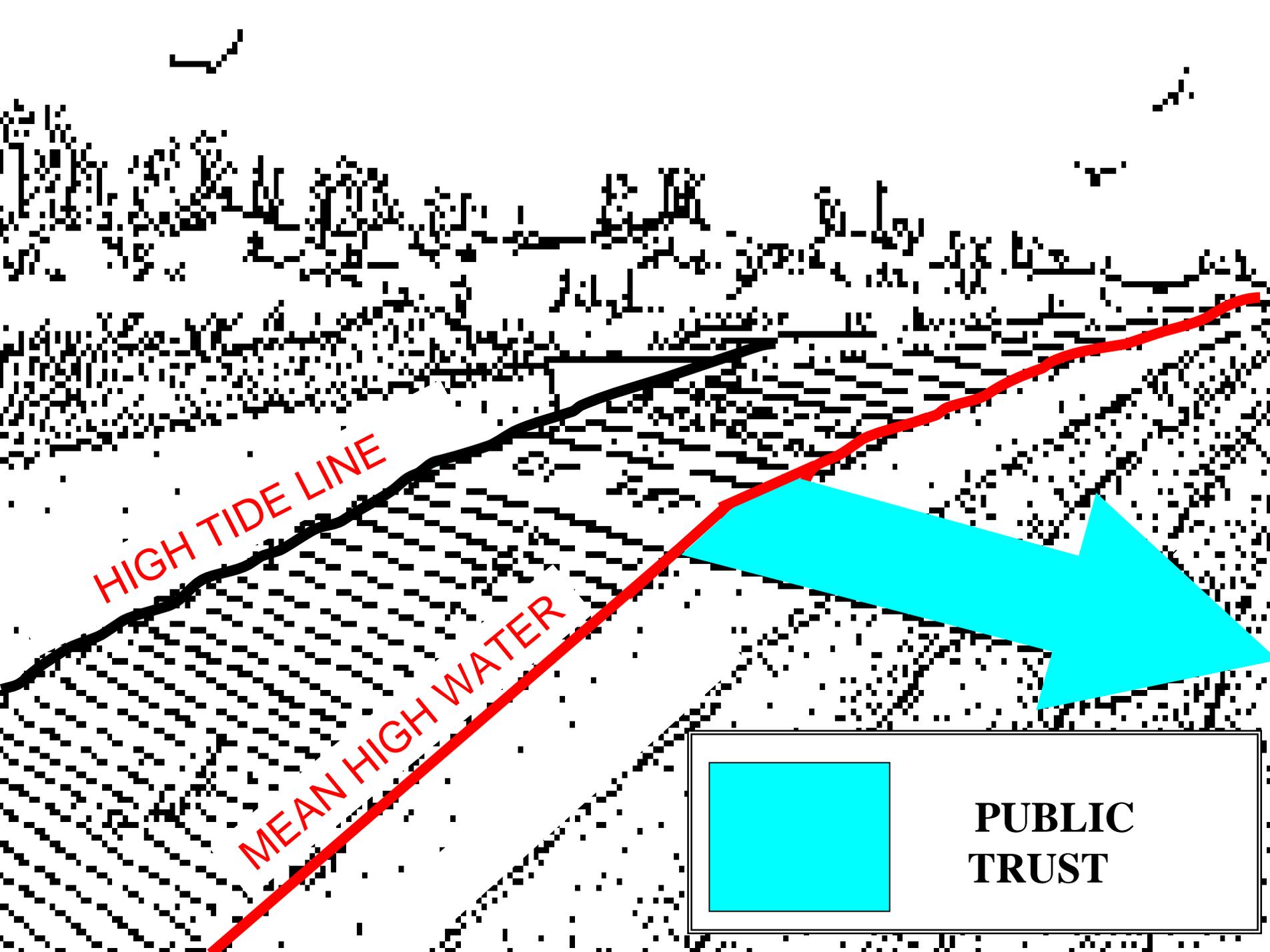


Who Owns Long Island Sound?

The State of Connecticut holds title to the submerged lands and waters of Long Island Sound, from the mean high water line to the State boundary, in trust for the general public pursuant to the public trust doctrine.

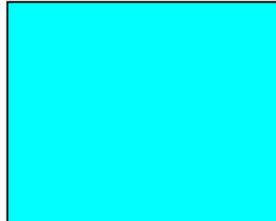


**State of Connecticut
State and County Boundaries
in Long Island Sound**



HIGH TIDE LINE

MEAN HIGH WATER

 PUBLIC TRUST



Who manages the State's underwater property?

No one, except for:

- Shellfish and aquaculture leases
- Marine mining (sand & gravel removal)
royalty payments



Public trust concepts integrated into:

- ④ Outreach material
- ④ Coastal regulatory programs
 - Promote public access, water-dependent uses
 - Minimize encroachments to maximize public trust area available for public use
 - Minimize adverse impacts to coastal resources through dock design



Why Can't "The State" Just Say No to Docks?

Littoral or Riparian Rights

- ✚ Right of reasonable access to navigable water from case law
- ✚ Has historically included fill, "wharfing out"

Long Island Sound is a free commons

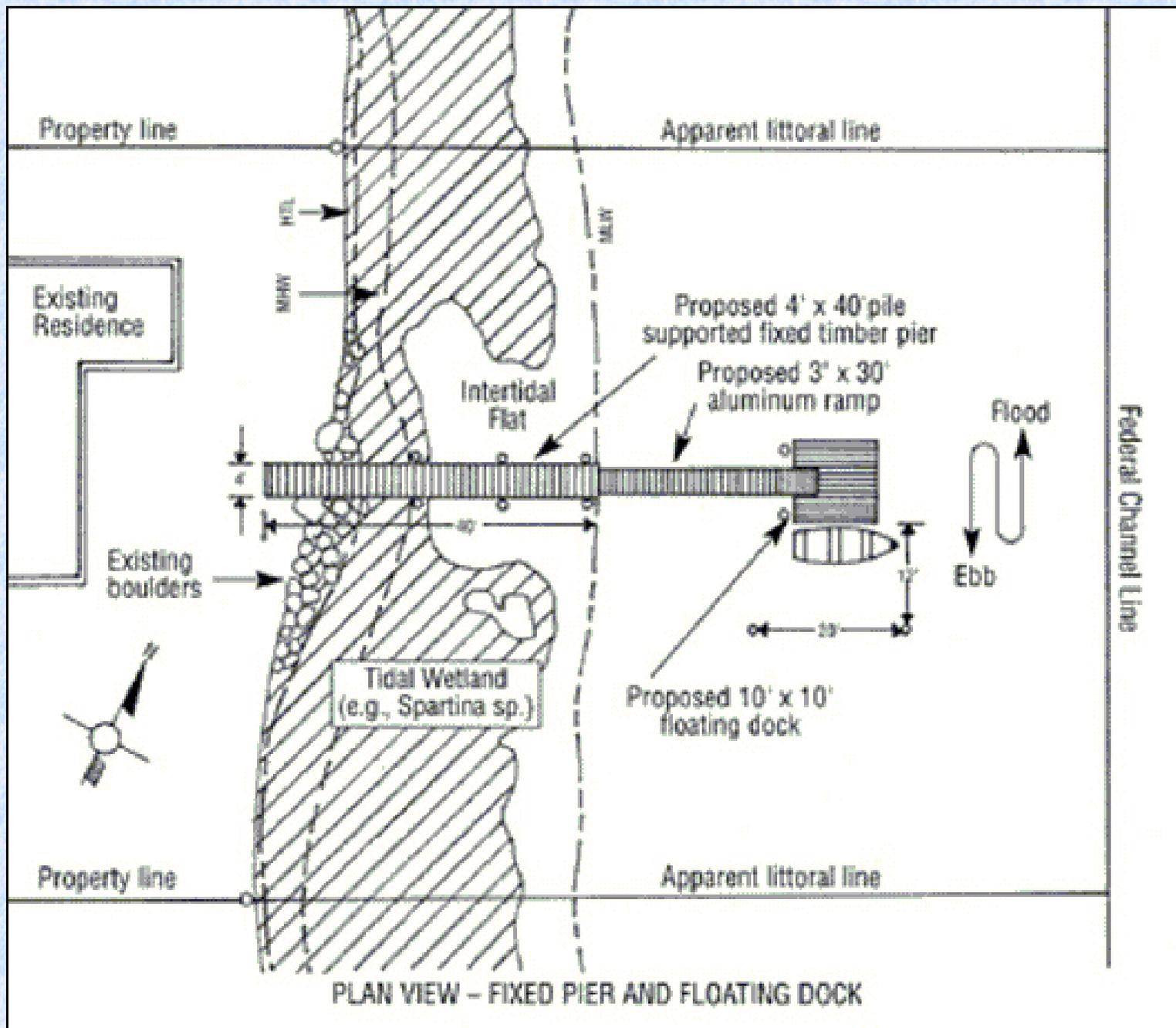
- ✚ No rule against private structures in the public trust area
- ✚ Anyone is free to use submerged lands for profit, so long as regulatory requirements are met



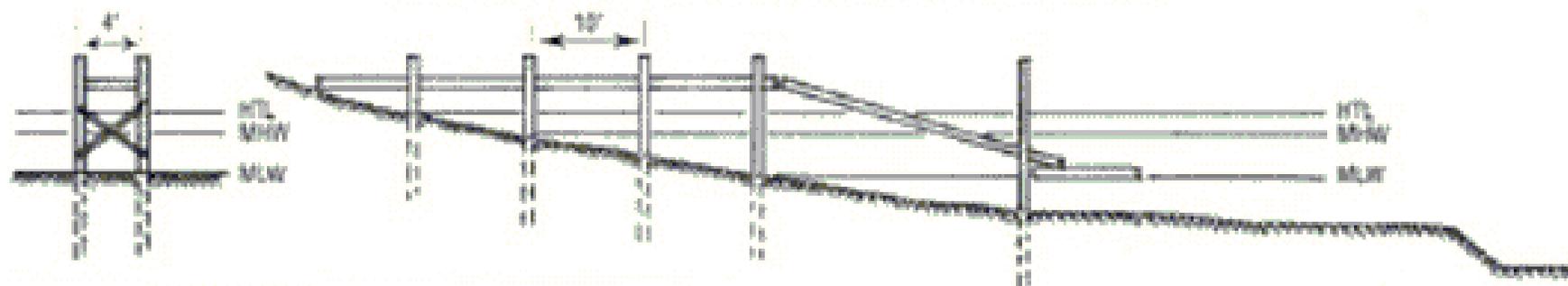
Public Trust Doctrine AND DOCKS

Minimized dock encroachment and adverse impacts to coastal resources and navigation are the basis for the dimensions of the typical dock that we recommend:

- ⊕ Generally, a fixed pier to mean low water with a ramp sized to accommodate the tidal range and a 10' by 10' float or a boat lift, or an all fixed dock that terminates 40' waterward of mean low water- discourage solid fill piers
- ⊕ Site conditions may result in only dinghy access
- ⊕ The pier must be elevated at least 5' above mean high water or provide stairs over pier to allow public access along the shore
- ⊕ Float stops or other devices to keep floats off substrate may be required to reduce impacts to substrate and biota
- ⊕ Removal of ramps and floats in the non-boating season may be required to allow shellfishing access



SECTION VIEW – FIXED PIER AND FLOATING DOCK



Proposed Fixed Pier and Floating Dock

Project Location

Applicant's Name, Address

Consultant's Name, Address

Date

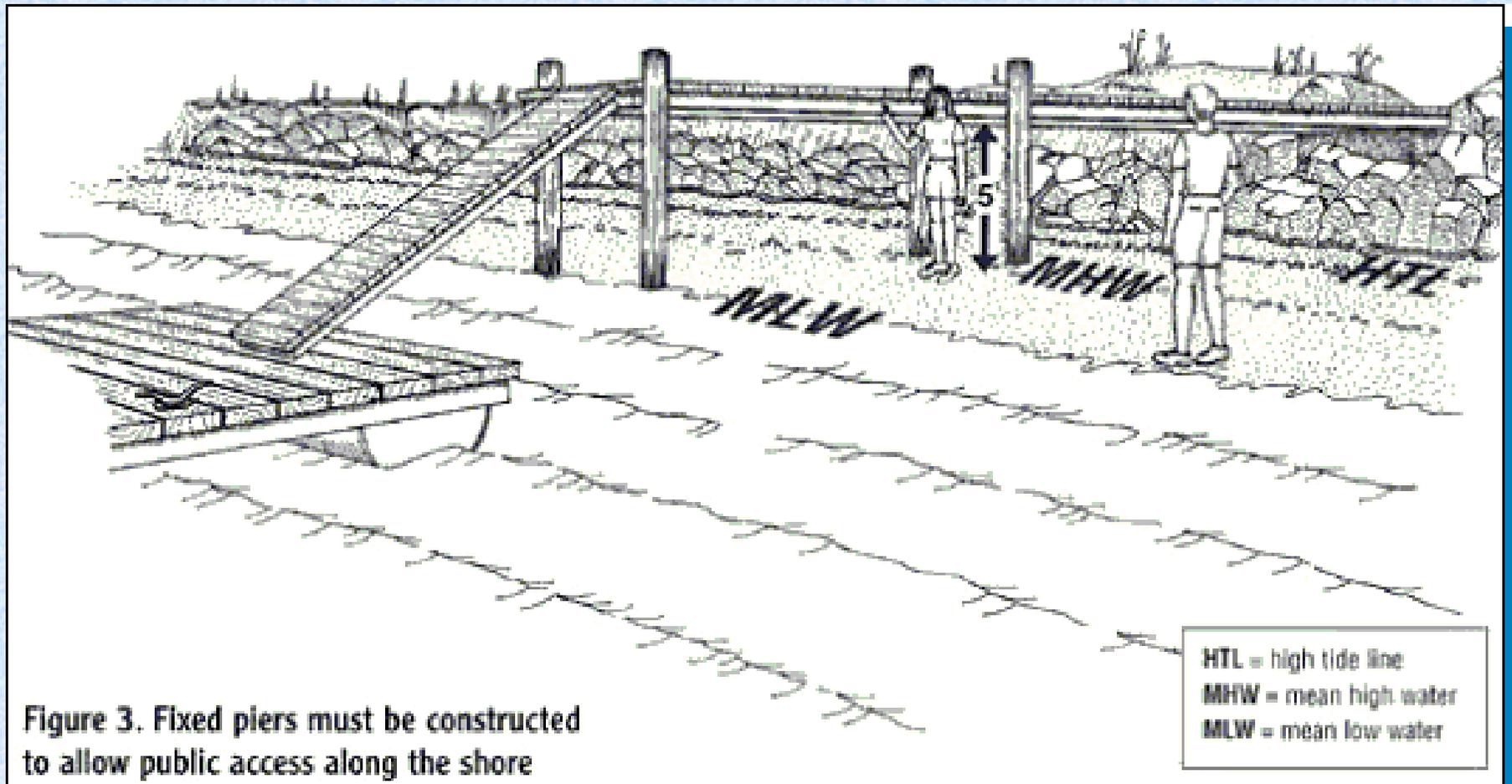
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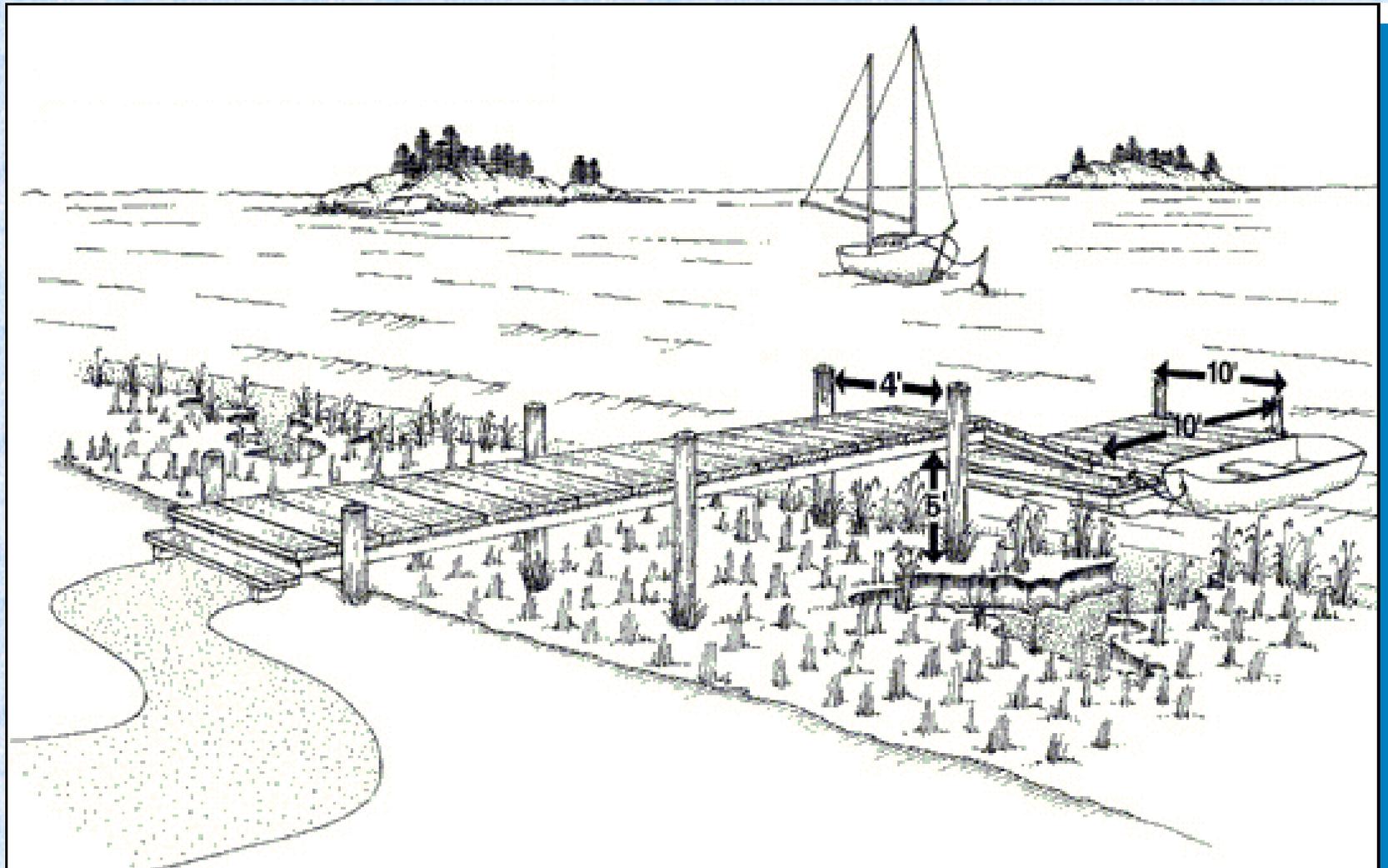


Scale 1" = 20'

Figure 2. Sample site plan



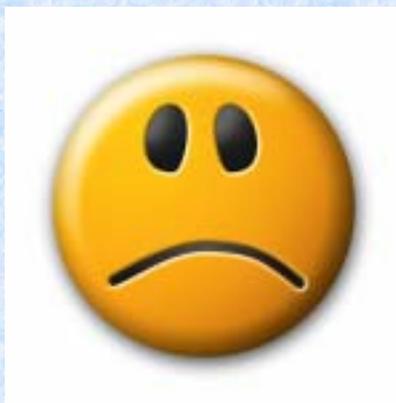
A Minimized Dock





Why are some docks too **BIG**?

- ✘ Possibly built prior to dock permitting program that began in program in 1939
- ✘ Possibly built with a permit after 1939, but before public trust standards were routinely incorporated into permit review
- ✘ Possibly **unauthorized!**



Large commercial and recreational docks



1234

29

Pre 1939 solid fill pier



Large Floats



A Large float with a low pier



A low pier impeding navigation in creek with a large platform at the waterward end





CT Department of Environmental Protection, Office of Long Island Sound Programs

Some docks are too Low



Low walkways that impede access





Some docks are just right





A fixed pier to mean low water with a boat lift





The Gist of Public Trust:

- ✦ Each state holds in trust for the use of the general public the area along the tidal and navigable waters. In Connecticut public trust property begins at mean high water. This area may be used for recognized public trust uses.
- ✦ Riparian or littoral owners may install docks in the public trust area to access the navigable waters off of their property, provided that public trust uses are not impacted, the encroachment of the dock is minimized, environmental impacts are not unacceptable and the state has issued a permit for the dock.
- ✦ OLISP's permit program works to balance public trust uses with private property rights, and protection of resources.